1941

File No. Prohibition II/41 Part II

Legal **DEPARTMENT**

B **BRANCH**

K

Subject:—

Rules and Notifications under the Abkari Act in Connection with Prohibition.

File No. Prohibition II/41 Part II

Std. Sects. Slip 4a 15 6.

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C O N T E N T S.

Legal Department File No. Prohibition II/41 (Pt. II).

Sr. No.	Compilation No.	Subject	Pages
		The Abkari Act, 1878.	
1.	U.R. to R.D.No. 278 P-confl. dt. 25-10-41	S.64A Draft order under	1-3
2.	U.R. to R.D.No. 322-L dt. 10-10-41	S.64A Draft orders under-	5-21
3.	U.R. to R.D.No. 3891 dt. 9-8-42	S. 64A Order under----	23-29

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A revised draft order is appended.

2. The revised order provides that no license shall be granted unless otherwise directed by Government in any particular case. Such a provision would reserve to Government power to make exception in any particular case. There is however no legal objection to the words, "unless Government otherwise directs in any particular case" being omitted .

Sd/- 25-10

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P.N.M. 25-10

U.R. to R.D. (in Poona) No. 278-P-Confl. dated the 25th October 1941.

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Draft order under section 64A of the Bombay Abkari Act, 1878.

In exercise of the powers conferred by section 64A of the Bombay Abkari Act, 1878 and in supersession of all previous orders made in this behalf, the Government of Bombay is pleased to order that unless Government otherwise directs in any particular case, no license for the tapping of any toddy-producing tree of the kind specified in column 2 of the Schedule appended hereto or for drawing toddy from any such tree shall be granted in any area specified in column 1 of the said Schedule or within a radius of three miles from the limits of any such area.

SCHEDULE.

Areas.	Kind of tree.
1	2
Here specify the areas.	Here specify the trees.

By order of the Governor of Bombay,

Secretary to Government.

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Office of the R.L.A.

Revised draft orders are appended.

2. Draft order I(3) at page 17 ante- This order has been revised so as to include licenses for the drawing of toddy from any trees (vide clause (d) of section 14(1) of the Abkari Act).

3. Draft order II(2) at page 18 ante .- This order is proposed to be issued under clause (c) of new section 64A. It inter alia provides that "the sales of foreign liquor at the excise licenses granted to Railway Refreshment Rooms within the said area should, on the days in question be restricted to bona fide travellers taking adequate meals". It does not appear that such an order can be issued under clause (c) of section 64-A. It is, therefore, omitted from the revised draft of the orders. It may be pointed out that the above provision can be inserted as a condition in the ~~le~~ licenses granted to the Railway Refreshment Rooms.

4. Draft order II(3) at page 19.The words "Mill Area and its vicinity" are vague. In the revised draft, the words "such areas as are notified in this behalf by the Collector" have therefore been subsitituted for these words.

5. Draft Order II(4).- R.D. should verify whether the draft order as revised carries out the intention.

6. Draft order II(6) and (7) at page 20 ante.- These orders refer to departmental depots and seem to be of a temporary nature. It does not appear necessary to include them in the draft orders. They are therefore omitted from the draft.

7. Revised draft orders 11and 12.- A new clause (f) has been inserted in revised draft order 12 in order to avoid any inconsistency between revised order 11 and order 12.

8. Revised draft order 13.- The form containing the conditions e in accordance with which auctions are to be held has not been scrutinized. If R.D. desires that this should be scrutinised by R.L.A. it should sent two copies of the form typed on half margin.

9. Draft order VI(2) at p. 28 ante.- The order has been revised so as to provide that the licenses referred to in the order shall not be granted except with the previous approval of the Commissioner.

10. Para. 4 of the R.D. note at pp. 30-31 ante.- The draft notification under section 6 of the Act has been returned to R.D. under this office u.r. No. 7928 dated 11th September 1941. The draft notification invests certain Abkari Officers with certain powers. New section 8-A lays it down that all Abkari Officers shall exercise the powers and perform the duties conferred and imposed on them by or under the Act in accordance with such orders as in the case of the Commissioner, the Provincial Government and in the case of other Abkari Officers the Provincial Government or the Commissioner, may from time to time make. In the exercise of the powers conferred upon them under section 6, the Abkari Officers referred to are under new section 8-A bound to obey the orders of the Commissioner or of the Provincial Government as the case may be. It is not necessary to refer to the new section in the draft notification under section 6.

11. As regards the question raised by the Commissioner or Excise in para. 3 of his letter dated 28th August 1941 at page 9 ante, namely, that the wording of new section 64-A is wide enough to give retrospective effect to the orders of Government regarding toddy arrangements and excise arrangements passed respectively on 19th June and 27the December 1940, attention is invited to para. 2 of the Statement attached to the Bombay Abkari (Second Amendment) Bill. As stated therein retrospective effect has been given to section 9 of the Amendment Act (New section 64-A) in order to validate the orders hitherto issued by Government . The orders in question are therefore saved by new section 64-A.

Sd/- P.N.MOOS.
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Remembrancer ofLegal Affairs

U.R. to R.D.No. 322-L dated the 10th Oct. 1941.

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Sd/- 10/10

Office of the R.L.A.

Paragraph 2(i)of Commissioner, page 56, and para. 2(i) of R.D. note page 91.
The proposed proviso in red ink to order (1), as slightly amended, is legally in order.

2. Para. 2(ii) of Commissioner, page 56 and para. 2(2) of R.D. note page 91: The prohibition areas and dry areas have been transposed.

3. Para. 2(iii) of Commissioner, page 57 and para. 2(3) of R.D. note page 91: R.D. proposes to delete the original draft order (3) at page 43 and to issue a separate order on the subject a at page 95. There is no objection to issuing a separate notification if R.D. is satisfied that it is necessary. Since Government Notification, Revenue Department No. 1977/33 dated the 28th October 1941 was issued in supersession of previous orders, it is the only order now in force on the subject. The draft notification at page 95 has, therefore, been amended to be in supersession of notification of the 29th October 1941 only. It has also been amended with a view to precision and as amended is in order. A clear copy of the draft notification is sent herewith.

4. Para. 2(iv) of Commissioner, page 57 and 2(4) of R.D. note page 92: There is no legalobjection to the proposed change in this order. A further slight change has been made in this order.

5. Para. 2(v) of Commissioner, page 58 and para. 2(6) of R.D. note page 92: The amendments suggested in Order (6) on page 43 in sub-para. (1)are in order.The amendment

suggested in sub-para. (2) is free from legal objection. The proviso to draft order (5) (as renumbered) may be amended as shown on page 45 ante.

6. Para. 2(vi) of Commissioner, page 59 and para. 2(8) of R.D. note page 93: The change in order (7) on page 45 ante is in order

7. Para. 2(vii) of Commissioner, page 59 and para. 2(10) of R.D. note: The intention underlying the Commissioner's sug estion for insertion of a proviso to revised order (10) is not quite clear. If it is intenddd that fresh Government sanction should not be necessary for the yearly renewal to the same person of a lic nse once sanctioned by Government, the proviso, as amended in pencil, is suitable.

8. Para. 2(viii) of Commissioner, page 59 and para. 2(11) of R.D. note page 93-

Order 11 (revised number):

Para. 2(viii) (a) of Commissioner, page 59:

There is no objection to altering the first para. of this order as suggested the by the Commissioner. It will then read as follows:-

"..... or for the retail sale of hemp drugs on premises not already sanctioned for the location of the shop or tree-foot booth the following procedure shall be followed:-"

It is not necessary to insert "subject to the restriction containe er in order 11" at the beginning of order 12,(revised No. 11). Order11, (revised No. 10) requiring previous approval of Government to certain licenses is absolute and will apply without any such words being inserted at the beginning of revised order 11.

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Para. 2(viii) (b) clause (b) of order (11) (as renumbered) on page 49 ante as amended is legally in order.

Para. 2(viii) (c):- Clause (e) may be deleted as proposed by the Commissioner.

Para. 2(viii) (d) :- The deletion of clause (f) is suggested apparently in order that it should not be necessary to obtain Government sanction even for location of booths or shops. There is no objection to deleting the clause.

Para. 2(viii) (e) :- The proposed proviso as slightly amended is in order.

Para. 2(viii) (e):- The proposed "further proviso" on page 60 ante should be inserted after clause (d) and it may be recast as follows

"Provided that the Collector may, in any particular case vary the procedure prescribed in the foregoing clauses after recording his reasons for doing so."

9. Para. 2(ix) of Commissioner, page 61 and para. 2(12) of R.D. note page 93:- The alteration is legally in order.

10. Para. 2(ix) of Commissioner, page 61 and para. 2(13) of R.D. note page. 93 :- It is stated that the licenses for the manufacture or cultivation of hemp are issued by the Commissioner andnot by the Collectors. Under sections 14(1) and 16(1) the licensing authority is the Collector. It is not clear therefore how the Commissioner issues these licenses and not the Collector.

There is no authority under section 64A to prescribe a licensing authority different from that prescribed under the statute itself. Such a provision will not fall under any of the clauses (a) to (k) of new section 64A. It will not be covered by clause (g) or clause (k). Possible the commissioner has been authorised by a notification undersection 5 or section 6 to issue licenses under section 14(1) and 16(1). The draft order 13 cannot therefore be amended as suggested by the Commissioner. The only order that can be made under section 64A is the one suggested in order 44 as supplied by the N.L.A.

11. On further consideration N.L.A. 44 is of opinion that it would be inadvisable from the legal point of view to prescribe the conditions of sale in a Schedule to the orders 12 revised number issued under section 64A. If the conditions are meant to be elastic and alterable as seems to be thecase, there is no point in giving them statutory form and rigidity. Moreover the proposed conditions not only regulate the procedure of the Collector or other person holding the auction, but are also calculated to impose duties and liabilities upon the person whose bid is accepted at the auction; e.g. in regard to the ration. deposit, loss in resuction etc. The conditions of sale therefore require t be settled bot as a statutory draft, but as a Solicitor's draft. they should be so drafted and executed as a valid contract which it would be possible to enforce. The Schedule to 44 this order is therefore omitted. Clause (b) of revised Order 12 may be revised as shown at page 61

and R.D.may issue instructions in regard to the conditions of sale under section 8A of the Bombay Abkari Act, after getting the draft conditions settled by the Solicitor to Government i-n Legal Department.

Sd/-
8-5

Remembrancer of Legal Affairs.

U.R. to R.D.No. 3891, dated 9th May 1942.

S.A.K.
16-4

Revenue Department.

Bombay Castle, 1942.

No. 1977/33.- In exercise of the powers conferred by section 64-A of the Bombay Abkari Act, 1878(Bom. V. of 1878), and in supersession of Government Notification, Revenue Department No. 1977/33, dated the 28th October 1941 the Government of Bombay is pleased to order that unless Government otherwise directs in any particular case, no licence for the tapping of any toddy-producing tree of the kind specified in column 2 of the Schedule appended hereto or for drawing toddy from any such tree shall be granted in any area specified in column 1 of the said Schedule or within a radius of three miles from the limits of the areas specified in entries 2 to 8 in column (1) of the said Schedule.

Bombay Abkari Act 1878

Schedule

Insert here B-B on page 95.

By order of the Governor of Bombay

Secretary to Government.

S.A.K.
16-4